

EXHIBIT 12

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE LITIGATION) CIVIL ACTION:
-----X 01-CV-12257-PBS
THIS DOCUMENT RELATES TO:)
U.S. ex rel. Ven-A-Care of the) Judge Patti B.
Florida Keys, Inc., v. Abbott) Saris
Laboratories, Inc., No.)
06-CV-11337-PBS; U.S. ex rel.) Magistrate Judge
Ven-A-Care of the Florida Keys,) Marianne Bowler
Inc. v. Abbott Laboratories, Inc.,)
No. 07-CV-11618-PBS; U.S. ex rel.)
Ven-A-Care of the Florida Keys,) DEPOSITION OF
Inc. v. Dey, Inc., et al., No.) JERRY WELLS
05-11084-PBS; U.S. ex rel.)
Ven-A-Care of the Florida Keys,) DECMEBER 15, 2008
Inc., et al. v. Boehringer) TALLAHASSEE, FL
Ingelheim Corp., et al., No.)
07-10248-PBS)
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<p style="text-align: right;">Page 122</p> <p>1 A. I don't know that I had.</p> <p>2 Q. Do you recall reading this newspaper</p> <p>3 article after it came out with -- with you being</p> <p>4 quoted in it?</p> <p>5 A. I don't. I do not.</p> <p>6 Q. You will agree with me that the</p> <p>7 difference between acquisition cost and average</p> <p>8 wholesale price was the reason that you urged</p> <p>9 HCFA not to use average wholesale price as a</p> <p>10 pricing mechanism, correct?</p> <p>11 MS. ST. PETE-GRIFFITH: Object to the</p> <p>12 form.</p> <p>13 MS. WALLACE: Objection, form.</p> <p>14 THE WITNESS: The reason we encouraged</p> <p>15 them to allow us to use a WAC plus reimbursement</p> <p>16 basis was because I felt like AWP was being</p> <p>17 manipulated.</p> <p>18 BY MR. COOK:</p> <p>19 Q. And you had that belief back in 1987,</p> <p>20 correct?</p> <p>21 A. I did.</p> <p>22 MS. ST. PETE-GRIFFITH: Object to form.</p>	<p style="text-align: right;">Page 124</p> <p>1 marked as Exhibit 1006. It is -- for the record,</p> <p>2 it is a document entitled Legislative Proposal</p> <p>3 Analysis dated October 1, 1998. Do you recognize</p> <p>4 this document?</p> <p>5 A. I think I do.</p> <p>6 Q. You are listed as the contact name on</p> <p>7 this Legislative Proposal Analysis. Do you see</p> <p>8 that?</p> <p>9 A. I do.</p> <p>10 Q. Is it fair to assume that you probably</p> <p>11 wrote this Legislative Proposal Analysis?</p> <p>12 A. I had something to do with writing it.</p> <p>13 Q. What's the subject matter of this</p> <p>14 Legislative Proposal Analysis?</p> <p>15 A. This is parenteral and enteral</p> <p>16 pharmacies. It was, I think, drafted after or</p> <p>17 before a meeting with parenteral and enteral</p> <p>18 pharmacies and some legislators.</p> <p>19 Q. Was Ven-a-Care included in that</p> <p>20 meeting?</p> <p>21 A. I don't know that for sure. I think</p> <p>22 they were. They probably were. Should have</p>
<p style="text-align: right;">Page 123</p> <p>1 BY MR. COOK:</p> <p>2 Q. And you communicated that to HCFA back</p> <p>3 in the 1980s, correct?</p> <p>4 MS. ST. PETE-GRIFFITH: Object to the</p> <p>5 form.</p> <p>6 THE WITNESS: I did.</p> <p>7 MR. COOK: This is a good time for a</p> <p>8 break.</p> <p>9 THE VIDEOGRAPHER: The time is 11:27</p> <p>10 a.m. We are going off the record.</p> <p>11 We are off the record.</p> <p>12 (Thereupon, a recess was taken,</p> <p>13 commencing at 11:27 a.m. and concluding at 11:37</p> <p>14 a.m. of the same day.)</p> <p>15 THE VIDEOGRAPHER: This is the</p> <p>16 beginning of Tape 3 of the videotaped deposition</p> <p>17 of Jerry Wells taken on December 15, 2008. The</p> <p>18 time is 11:37 a.m. and we are back on the record.</p> <p>19 (Exhibit Abbott-Wells 1006 was</p> <p>20 marked for identification.)</p> <p>21 BY MR. COOK:</p> <p>22 Q. Mr. Wells, I've handed you what we have</p>	<p style="text-align: right;">Page 125</p> <p>1 been.</p> <p>2 Q. Why were these pharmacies and</p> <p>3 legislators and you meeting together in 1998?</p> <p>4 A. This was a discussion meeting to</p> <p>5 establish reimbursement level for parenteral</p> <p>6 nutrition and to entertain the idea of</p> <p>7 establishing a new provider type in the pharmacy</p> <p>8 program, which would be a parenteral or IV</p> <p>9 provider to address some of the issues that</p> <p>10 didn't fit the square peg into the round hole of</p> <p>11 community pharmacy.</p> <p>12 Q. What are some of the issues that you're</p> <p>13 referring to there when you talk about these</p> <p>14 square peg/round hole problems between infusion</p> <p>15 pharmacies and community pharmacies?</p> <p>16 A. Infusion pharmacies were involved in</p> <p>17 preparation of sterile product for injectable</p> <p>18 use, which is a little more involved than putting</p> <p>19 prescription tablets or capsules into a vial and</p> <p>20 dispensing in the community environment. There</p> <p>21 were some issues with disposal supplies that</p> <p>22 providers would like to be reimbursed for that we</p>

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<p style="text-align: right;">Page 206</p> <p>1 for single source brands. 2 Q. And for innovator multisource products, 3 what was the discount they were able to receive? 4 A. It was 43.41 percent. 5 Q. What are innovator multisource 6 products? 7 A. That is a product whose patent has 8 expired but is still marketed by the original NDA 9 applicant. 10 Q. Do you have an expectation for what the 11 discounts from AWP would be for noninnovator 12 multisource products? 13 A. Because those manufacturers and 14 suppliers tend to overstate their AWP's, you can 15 see 80 or 90 percent in some cases. 16 Q. And you've known that since at least 17 1995, right? 18 MS. ST. PETER-GRIFFITH: Object to the 19 form. 20 MS. WALLACE: Objection to form. 21 MR. BREEN: Objection, form. 22 THE WITNESS: I don't know that I know</p>	<p style="text-align: right;">Page 208</p> <p>1 Proposal Analysis we looked at, right? 2 MS. ST. PETER-GRIFFITH: Object to the 3 form. 4 THE WITNESS: That was a little 5 different issue, but it would still apply. 6 BY MR. COOK: 7 Q. And that was the same issues that you 8 saw discussed in response to the 1996 Florida- 9 specific report about pricing for IV drugs and IV 10 fluids, correct? 11 MS. ST. PETER-GRIFFITH: Object to the 12 form. 13 THE WITNESS: That was a presumption 14 that we had made in the 1996 period. 15 BY MR. COOK: 16 Q. Other than the meeting in Richmond in 17 September of 1995, have you had discussions with 18 anybody from HCFA about the deeper level of 19 discounts that are available to purchasers of IV 20 fluids and IV drugs via the pharmacy market? 21 A. Very likely I have. 22 Q. Is it fair to say you don't recall the</p>
<p style="text-align: right;">Page 207</p> <p>1 that to that extent in 1995. Certainly in 2001 I 2 knew that. 3 BY MR. COOK: 4 Q. The sentence after you discussed the 5 discounts from single source brands and innovator 6 multisource products reads, quote, "These are 7 predictable, confirm the ability of closed shop 8 pharmacies to negotiate pricing concessions from 9 pharmaceutical manufacturers that may not be 10 available to community-based pharmacies," closed 11 quote. 12 Do you see that? 13 A. Yes. 14 Q. That was true in 2001, correct? 15 MS. ST. PETER-GRIFFITH: Object to 16 form. 17 MS. WALLACE: Objection, form. 18 THE WITNESS: I believed it to be true. 19 That's why I put it in the letter. 20 BY MR. COOK: 21 Q. And that was the same phenomenon that 22 you had observed in 1998 with the Legislative</p>	<p style="text-align: right;">Page 209</p> <p>1 specifics of those conversations from years ago, 2 correct? 3 MS. ST. PETER-GRIFFITH: Object to the 4 form. 5 THE WITNESS: Right. I have 6 conversations with lots of people, or I did when 7 I was working. 8 BY MR. COOK: 9 Q. Do you recall what the reaction of 10 anybody from HCFA was to you describing these 11 deeper discounts for home IV pharmacies? 12 A. I don't recall reactions. 13 Q. Do you recall how far back those 14 conversations with individuals at HCFA go? 15 A. No. 16 Q. Have you discussed that issue with 17 anyone from other state Medicaid programs? 18 A. Yes. 19 Q. Do you recall who in other state 20 Medicaid programs you have had specific levels of 21 conversation with? 22 A. I don't recall specific instances, but</p>

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<p style="text-align: right;">Page 226</p> <p>1 MR. COOK: Jim, do not interrupt the 2 witness when he's about to give his answer. 3 MR. BREEN: Well, I think he needs to 4 hear the question because I think it's chopped 5 up, and I think I can get it read back any time I 6 want. 7 But if you don't want to read it back, 8 I object to that. 9 MR. COOK: I will ask the question -- 10 MR. BREEN: I think it's improper. 11 MR. COOK: -- again. I'll ask the 12 question again. 13 BY MR. COOK: 14 Q. If the -- is that consistent; that is, 15 this distribution, consistent with your 16 understanding of the way generic drugs have been 17 priced in the marketplace going back in the mid- 18 1990s? 19 MS. ST. PETER-GRIFFITH: Object to 20 form. 21 MR. BREEN: Objection, form. 22 MS. WALLACE: Objection, form.</p>	<p style="text-align: right;">Page 228</p> <p>1 to that. I think I came to that conclusion from 2 other sources because I don't think I focused on 3 the generic data from the OIG report. 4 BY MR. COOK: 5 Q. Upon coming to that conclusion, what 6 steps did you take to change the reimbursement 7 methodologies at Florida Medicaid? 8 A. As I mentioned, when this information 9 became available, we were focused very heavily on 10 brand name drugs and implementing a preferred 11 drug list and contracting for supplemental 12 rebates, which was all brand name product 13 related, and we were not focusing on generic 14 products at that time, and it was kind of an all- 15 consuming exercise. We later on implemented some 16 more broadly-based state MAC pricing to address 17 some of the generic issues, but the dollars where 18 we got the most return for our effort were on 19 brand name drugs. 20 Q. When you implement a MAC in Florida, do 21 you attempt to estimate precisely what it is that 22 providers are paying for that product or do you</p>
<p style="text-align: right;">Page 227</p> <p>1 THE WITNESS: If I understand your 2 question, I think the answer is yes to that. 3 BY MR. COOK: 4 Q. And it has been your understanding that 5 this is the way generic drug prices were priced 6 in the 1990s, correct? 7 MS. ST. PETER-GRIFFITH: Object to the 8 form. 9 MS. WALLACE: Objection to form. 10 (Simultaneous conversation 11 interrupted by the court reporter.) 12 BY MR. COOK: 13 Q. That is, you had that understanding in 14 the 1990s? 15 A. In the late '90s, yes. 16 Q. And you obtained that understanding 17 from, in part, the review of invoice prices that 18 the OIG conducted, correct? 19 MS. ST. PETER-GRIFFITH: Object to the 20 form. 21 MS. WALLACE: Objection to form. 22 THE WITNESS: I don't know the answer</p>	<p style="text-align: right;">Page 229</p> <p>1 try to set the MAC at a point somewhat above the 2 acquisition cost of providers? 3 MS. WALLACE: Mr. Cook, could you 4 please provide a time frame for that as since 5 retired? 6 MR. COOK: Absolutely. 7 BY MR. COOK: 8 Q. When you were working for the state 9 Medicaid program, you had personal responsibility 10 for establishing, to some degree, the dollar 11 amount for various state MACs, correct? 12 MS. ST. PETER-GRIFFITH: Object to the 13 form. 14 THE WITNESS: That's correct. 15 BY MR. COOK: 16 Q. And that was true from 1992 to 2007, 17 correct? 18 MS. ST. PETER-GRIFFITH: Object to the 19 form. 20 THE WITNESS: That is correct. 21 BY MR. COOK: 22 Q. When you established those MACs, were</p>

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<p style="text-align: right;">Page 230</p> <p>1 you trying to set the MAC at exactly the 2 acquisition cost of providers or at some point 3 above or below the acquisition cost for 4 providers? 5 A. We would not have tried to set 6 acquisition or the reimbursement level below 7 acquisition cost. We would try to set the 8 reimbursement level at a point where 95 percent 9 of the providers could purchase the drug at or 10 below that price. 11 Q. Now, the dispensing fee in Florida has 12 remained the same in Florida, of course, from 13 1986 until 2007, correct? 14 A. That's correct. 15 MS. ST. PETER-GRIFFITH: Object to the 16 form. 17 BY MR. COOK: 18 Q. And that's primarily relevant to the 19 retail pharmacy, correct? 20 MS. WALLACE: Objection to form. 21 MS. ST. PETER-GRIFFITH: Object to the 22 form.</p>	<p style="text-align: right;">Page 232</p> <p>1 providers can purchase the product at or below 2 that price. 3 Q. I'm not a statistician, so I don't know 4 that I can frame this right. Do you know what 5 sort of -- 6 A. And I wouldn't know whether you did or 7 not, so that's okay. 8 Q. Do you know what sort of variance there 9 tends to be in the amount that providers pay for 10 these products? That is, when you're hitting the 11 95 percent level where 95 percent of providers 12 can purchase it, do you have a feel for how wide 13 the variation can be below that 95th percentage 14 point? 15 A. Well, yes, because we would look 16 something like your histogram for AWP discounts 17 almost. We looked at invoices and catalogs and 18 set state MAC prices when we were doing that 19 internally. And I would usually email that 20 information to Walgreens or Wal-Mart or CVS and 21 to a half of dozen independents or to the Florida 22 Pharmacy Association and say, I'm looking at</p>
<p style="text-align: right;">Page 231</p> <p>1 THE WITNESS: No. 2 BY MR. COOK: 3 Q. I can ask that in a better way. That 4 same -- while that same -- forget it. 5 Costs have gone up at the retail 6 pharmacy from 1986 to 2007, correct? 7 A. I'm sure they have. 8 Q. In setting state MACs, do you make an 9 effort to set the ingredient costs at a point 10 where the total reimbursement, the ingredient 11 cost plus the dispensing fee, covers pharmacies' 12 costs for dispensing that product? 13 MS. ST. PETER-GRIFFITH: Object to the 14 form. 15 MS. WALLACE: Objection to form. 16 THE WITNESS: No. 17 BY MR. COOK: 18 Q. What is your goal in setting the MAC? 19 A. I just stated that, I think, but I'll 20 restate it. The goal of setting a MAC price is 21 to set the price as low as you can set it where 22 somewhere in the neighborhood of 95 percent of</p>	<p style="text-align: right;">Page 233</p> <p>1 these pricing levels on these drugs, give me some 2 feedback, can you buy them at that level, this is 3 what we think it ought to be. 4 Q. Uh-huh. 5 A. And if I set it too low, they'd scream 6 a lot. If I set it too high, they'd say, well, 7 that looks fine, we can just barely make it. 8 Q. Have you gone through that process for 9 the infusion and IV drugs listed in the complaint 10 in this case? 11 A. No. 12 Q. So those are still being paid based 13 upon -- 14 A. They are being paid based upon the 15 provisions of the Deficit Reduction Act of 2005 16 at this point, which mandated the State of 17 Florida adopting those -- that pricing logic 18 based on manufacturer rebate levels to calculate 19 the average manufacturer price. 20 Q. And that's at 250 percent of the 21 average manufacturer's price, correct? 22 A. That's correct.</p>

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<p style="text-align: right;">Page 266</p> <p>1 OIG had convinced HCFA that pharmacies were 2 getting fairly substantial discounts below AWP, 3 which was something everybody knew, but they 4 wanted the states to adopt some methodology, some 5 discount below AWP. 6 Q. And when you said everybody knew that, 7 that was true of Florida Medicaid at that time? 8 A. It was. 9 Q. What was your understanding of what 10 discounts -- I'm sorry -- pharmacy providers were 11 paying? And let me break that into two 12 questions. 13 What was your understanding of what 14 pharmacy providers were paying for single source 15 brand drugs, and, then secondly, what was your 16 understanding of what pharmacy providers were 17 paying for multisource generics? 18 A. Single source brand drugs were 19 typically at 14 to 15 or even 16 percent discount 20 below the published AWP at that time. And 21 generic products were all over the map; depended 22 on who you bought them from. That was before, I</p>	<p style="text-align: right;">Page 268</p> <p>1 operation and I talked to pharmacists. I know 2 what the discounts are. 3 Q. Okay. 4 A. Or thought I did, anyway. 5 Q. And you probably covered this in a 6 prior deposition, so I apologize. When were you 7 a practicing pharmacist? 8 A. I came to Medicaid in 1984 from a 9 retail pharmacy operation. 10 Q. Where was that pharmacy operation 11 located? 12 A. Tallahassee, Florida. I had worked 13 prior to that several years in central Florida, 14 Lakeland area, for Eckerd, which is a local chain 15 in the south. CVS now owns them. 16 Q. Okay. 17 A. And in between those, I had a stint of 18 11 years with a pharmaceutical manufacturer. 19 Q. Which manufacturer was that? 20 A. Hoffmann-La Roche. 21 Q. What did you do with Hoffmann-La Roche? 22 A. I started out as a territory</p>
<p style="text-align: right;">Page 267</p> <p>1 think, generic manufacturers had really started 2 jacking up their published AWP's. So, you know, 3 some were fairly accurate and others were 4 inflated to greater or lesser extents. 5 Q. Okay. And if I'm not mistaken, 6 discounts of -- speaking about branded drugs of 7 14 to 16 percent off the reported AWP, that was 8 what OIG was informing HCFA as well? 9 A. That's correct. That's was their 10 focus. And, again, that's because, as we talked 11 earlier, that's where all your money goes, is for 12 the branded products. You don't spend a lot of 13 money on the generics. 14 Q. Right. And OIG -- so OIG was telling 15 HCFA that for branded drugs, discounts were in 16 the range of 14 to 16 percent off reported AWP's; 17 and that was your understanding separately from 18 OIG was telling HCFA? 19 A. Well, I knew that already. 20 Q. You knew that. How did you know that? 21 A. I'm a pharmacist and I actually came to 22 work in the Medicaid program from a retail</p>	<p style="text-align: right;">Page 269</p> <p>1 professional sales rep detailing doctors, then I 2 spent a little time as a medical school rep at 3 the Shands Teaching Hospital in Gainesville, and 4 then came back and became the originator of 5 government affairs for Hoffmann-La Roche in the 6 state of Florida and spent most of my time 7 working on the Medicaid and Medicare programs and 8 other state initiatives rather than calling on 9 doctors. 10 Q. Now, Mr. Wells, perhaps in the ability 11 to save us a little time, have you covered all of 12 this -- your prior history, I assume, you've 13 covered in one of your prior depositions? 14 A. Many times. 15 Q. Okay. I don't believe that for the 16 state of Idaho -- in fact, I'm almost certain 17 that your prior depositions were not cross- 18 noticed, but perhaps there's a way we can just 19 adopt the testimony that you have already given 20 and I can short-circuit all of this. Is that 21 acceptable to you? 22 A. That's fine. I'm sure that there are</p>

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<p style="text-align: right;">Page 338</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 customary charge. That remains in the Federal</p> <p>3 Code of Federal Regulations today.</p> <p>4 BY MR. COOK:</p> <p>5 Q. The 1987 article that Mr. Breen</p> <p>6 referred you to where you referred to AWP as a</p> <p>7 sticker price, you said that the sticker price</p> <p>8 analogy doesn't apply to generics, right?</p> <p>9 MS. ST. PETER-GRIFFITH: Objection to</p> <p>10 form.</p> <p>11 MR. BREEN: Objection to form.</p> <p>12 THE WITNESS: At this point that would</p> <p>13 not be an appropriate analogy to use for generic</p> <p>14 products.</p> <p>15 BY MR. COOK:</p> <p>16 Q. And you said that it didn't apply to</p> <p>17 generics because the pricing of generics is all</p> <p>18 over the place, right?</p> <p>19 A. It is now, and probably was even, to</p> <p>20 some extent, at that point.</p> <p>21 Q. And just so I can nail down the</p> <p>22 distinction you're drawing here, are you drawing</p>	<p style="text-align: right;">Page 340</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 form.</p> <p>3 MS. WALLACE: Object to form.</p> <p>4 THE WITNESS: I don't know that that</p> <p>5 article said that. There was a letter from Ven-</p> <p>6 a-Care that mentioned that AWP was a joke.</p> <p>7 AWP was a pricing reference point that</p> <p>8 is a reasonable indicator of approximate cost for</p> <p>9 brand name drugs. It is no longer a reasonable</p> <p>10 indicator for generic drugs and I don't know when</p> <p>11 that diversion occurred. At one point it</p> <p>12 probably was a reasonable indicator for generic</p> <p>13 drugs.</p> <p>14 BY MR. COOK:</p> <p>15 Q. Certainly by 1990 it was no longer a</p> <p>16 reasonable indicator of price for generic drugs,</p> <p>17 correct?</p> <p>18 MS. WALLACE: Object to form.</p> <p>19 MS. ST. PETER-GRIFFITH: Object to the</p> <p>20 form.</p> <p>21 MR. BREEN: Object to form.</p> <p>22 THE WITNESS: I think that by 1990 that</p>
<p style="text-align: right;">Page 339</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 a distinction between brands and generics in the</p> <p>3 sense that the relationship between published</p> <p>4 prices and acquisition prices for generics are</p> <p>5 not -- do not bear a predictable relationship?</p> <p>6 MR. BREEN: Object to the form.</p> <p>7 MS. WALLACE: Objection, form.</p> <p>8 THE WITNESS: The analogy for the</p> <p>9 automobile window sticker that I used was</p> <p>10 specifically related to brand name drugs in the</p> <p>11 mid to late 1980s.</p> <p>12 BY MR. COOK:</p> <p>13 Q. In the article, there are quotes</p> <p>14 referring to AWP as, quote, "meaningless" and,</p> <p>15 quote, "a joke."</p> <p>16 MS. ST. PETER-GRIFFITH: Object to</p> <p>17 form.</p> <p>18 MR. BREEN: Objection to form.</p> <p>19 BY MR. COOK:</p> <p>20 Q. Would that be a better characterization</p> <p>21 for AWP with respect to generics?</p> <p>22 MS. ST. PETER-GRIFFITH: Object to</p>	<p style="text-align: right;">Page 341</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 would be a valid statement.</p> <p>3 MR. COOK: I don't have any more</p> <p>4 questions.</p> <p>5 MS. ST. PETER-GRIFFITH: I have nothing</p> <p>6 further.</p> <p>7 MR. COOK: I think we're done. Thank</p> <p>8 you very much.</p> <p>9 MR. YOUNG: Mr. Wells, just one or two</p> <p>10 question to follow up.</p> <p>11</p> <p>12 EXAMINATION</p> <p>13 BY MR. YOUNG:</p> <p>14 Q. Mr. Wells, just to follow up on some of</p> <p>15 the questions Mr. Cook was just asking you, when</p> <p>16 you were talking about average prices in response</p> <p>17 to questions by Mr. Breen, were you responding</p> <p>18 with respect to branded drugs as well?</p> <p>19 MS. ST. PETER-GRIFFITH: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I don't recall the</p> <p>22 context of the question.</p>

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